



**MARYLAND DEPARTMENT OF AGRICULTURE
LEGISLATIVE COMMENT**

DATE: 04/02/2013

BILL No.: SB 1029

SUBJECT: AGRICULTURE – MARYLAND AGRICULTURAL CERTAINTY PROGRAM

COMMITTEE: HOUSE ENVIRONMENTAL MATTERS COMMITTEE

MDA POSITION: SUPPORT

EXPLANATION:

SB 1029 creates the Maryland Agricultural Certainty Program as a means to accelerate the implementation of agricultural best management practices necessary to address soil conservation and water quality issues on farms and to meet the agricultural nutrient and sediment reduction requirements under the Environmental Protection Agency (EPA) Total Maximum Daily Load (TMDL) for the Chesapeake Bay and the Watershed Implementation Plan (WIP) developed in Maryland to meet the Bay TMDL by 2025. This legislation was significantly amended on the Senate side to provide additional clarity and to strengthen the proposal.

COMMENTS:

The Chesapeake Bay TMDL established by the U.S. Environmental Protection Agency (EPA) requires significant reductions in nitrogen, phosphorus, and sediment by 2025. The TMDL is a result of a Federal Court decision and requires the Bay watershed states and the District of Columbia to develop watershed implementation plans (WIPs) detailing specific measures to achieve nutrient and sediment limits established by EPA.

The Maryland Agricultural Certainty Program, administered by the Maryland Department of Agriculture (MDA), provides a mechanism to certify farm operations that meet an advanced level to BMP implementation and management, addressing all soil conservation and water quality issues on the farm and achieving the farm's proportionate share of the agricultural TMDL nutrient and sediment load reduction. Once certified, a farm under the Certainty Program is excused for a 10 year period from meeting new state or local requirements imposed after the certification date when they relate to the reduction of nutrients and sediment. At the end of the 10 year certainty period, the certified operation is required to be in compliance with any new requirements that may have been enacted or adopted in the interim.

The intent of the legislation is to accelerate implementation of water quality measures. Farmers are more likely to make necessary water quality improvements to their operations, knowing these capital investments will not change for a defined period of time.

Farms certified under the Certainty Program will be required to report annually to the Department. Reporting will include provision of a copy of their current nutrient management plan. Failure to have a current Nutrient Management Plan accounts for 2/3 of non-compliance issues found on farms since the Maryland Department of Agriculture's (MDA) regulatory inspections began seven (2006) years ago. Farmers will also report on the operation and maintenance of best management practices implemented for enrollment in the Certainty Program. Program accountability will include inspections of Certainty farms at least once every three years to ensure required practices are being maintained and conditions on the farm have not changed and impacted the environmental standards required of certified farm operations. Inspections will be conducted by trained and certified professionals who have demonstrated their skills and knowledge in disciplines of soil conservation, agricultural water quality improvement, and nutrient management. Through the inspections and information provided by the Certainty Program, Maryland will not only achieve water quality goals faster, but will also have greater confidence in reported progress toward Bay goals and heightened accountability for the practices implemented to meet these goals.

The Certainty Program will be delivered in partnership with the Maryland Department of the Environment because of their lead role in the TMDL program and responsibility in administering regulatory programs to protect the environment. As proposed, MDE must approve the regulations promulgated by MDA to implement the Certainty Program. Where there is a nexus between MDE and a farm operation, such as a permit or regulatory oversight, MDE will have a defined role in approving Certainty for individual farms and participate in the on-site inspections to certify the farm and ensure its ongoing compliance with Certainty Program requirements. MDE will receive reporting information on inspections and compliance for farm operations that are permitted or regulated by MDE. This partnership brings additional accountability to the Certainty Program.

MDE has made clear through our process to develop this legislation that our intention is for farms operating under a Maryland Animal Feeding Operation (MAFO) permit to be eligible for Certainty certification. To the extent that MAFO permit requirements related to nutrient and sediment reduction change after a MAFO permit holder has been certified under Certainty, the MAFO permit holder would not be subject to new requirements until

the end of the Certainty period. This legislation does not affect permits and regulatory authority administered through federal statutes or regulation such as the Clean Water Act.

The Certainty Program is not an exemption from current requirements. Nor is it a “pass” on new requirements. Certainty simply defers new requirements for a defined period of time in exchange for advanced BMP implementation, additional reporting requirements, and verification inspections.

While the agricultural sector has exceeded the first two Two-Year Milestones for Maryland’s WIP by 25 percent and currently exceeds the 2013 milestone goals for the June, 2013 deadline, Maryland is on a path of continuous improvement and needs to develop tools to accelerate progress toward Chesapeake Bay restoration goals. We should strive for approaches that increase the “reasonable assurance” that EPA requires for the success of Maryland’s WIP. This new approach offers additional incentives to farmers who step up early and may go beyond existing TMDL goals by addressing all nutrient and sediment issues on their farms. We should enact the Maryland Agricultural Certainty Program.

The Maryland Department of Agriculture respectfully urges a favorable report on Senate Bill 1029.